

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18305 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SUNIYA SIMLIYA NINAMA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 18305 of 2003
MS DR KACHHAVAH for Petitioner No. 1
MR KAMLESH KACHHAVAH for Petitioner No. 1
MS MITA S PANCHAL AGP for Respondent No. 1,3
RULE SERVED for Respondent No. 1,2
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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 12/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 15/04/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that two offences of theft and criminal house trespass were registered against him before Umara Police Station at C.R.No.43/2003 and 49/2003 for offences punishable u/s.459, 380 and 511 of I.P.C. in the month of February, 2003.

3. It was also alleged against the petitioner that two witnesses had given statements against him. On the strength of the aforesaid two registered offences and two statements of unnamed witnesses, the detaining authority found the petitioner to be a "dangerous person" and accordingly, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that two offences were registered, the petitioner could not be treated to be a "dangerous person". It has also been contended that the names of the witnesses were not disclosed to the petitioner, and therefore, there was a violation of the principle of natural justice. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.P B Sheth learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. The learned advocate for the petitioner has contended that two I.P.C. offences have been registered against the petitioner and that they are stray individual offences against individual movable and immovable properties. The fact cannot be denied because mere registration of two offences would not stage a threat to public order.

7. The detaining authority has also considered statements of two witnesses whose names have not been disclosed. The learned advocate for the petitioner has

argued that the names of the witnesses were required to be disclosed and when the names were not disclosed, the petitioner was unaware about those names and hence, the petitioner could not submit an effective representation to the detaining authority or to the State Government.

8. The learned AGP contends that u/s.9(2) of the said Act, the detaining authority has a power of privilege to withhold the names of the witnesses from the notice of the petitioner. There is no dispute about the same. At the same time, it is required to be considered that such a representation is required to be considered on appropriate material. Before a right or power of privilege is claimed u/s.9(2) of the said Act, the detaining authority has to ascertain by appropriate inquiry that there is a genuine fear or apprehension in the minds of the witnesses on account of which they apprehend fear and therefore, their names were required to be kept away from the notice of the petitioner. In the present case, we find that the records do not show that there was credible material before the detaining authority in order to withhold the names of the witnesses from the notice of the petitioner. In absence of such material on record, it cannot be said that the detaining authority was justified in withholding the names of those witnesses. Therefore, on both the counts, the order of detention falls and it is required to be quashed and set aside.

9. For the foregoing reason, this petition is allowed. The impugned order of detention dated 15/04/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Suniya Simliya Ninama, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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